

EXHIBIT A

DEFINITIONS

When used in the Agreement, the following capitalized words and phrases shall have the meanings set forth below:

1. Acceptance Criteria – the criteria determined by the Department in consultation with the Contractor that will test and confirm that a User Story Deliverable meets, in all material respects, the requirements set forth in the applicable User Story.
2. Acceptance Reserve – means One Million Dollars (\$1,000,000).
3. ACF – is defined in Exhibit B, Article I, Section C.1.
4. Aggregate Velocity Ratio – means the amount determined by dividing the sum of Expected Velocities in all completed Sprints by the number of Story Points for the User Story Deliverables Successfully Completed in all completed Sprints.
5. Agile – means a project management methodology used especially for software development that is characterized by the division of tasks into short iterations of work and adaptation of plans.
6. Anticipated Project Completion Date – means the date that is seventy-two (72) weeks from the Commencement Date.
7. Business Day – means any day that is not a Saturday, Sunday or State holiday.
8. Commencement Date – means the date on which the Project starts pursuant to Exhibit B, Article I, Section C.3.
9. Contractor Project Director – means Sanjay Shah from Deloitte Consulting LLP or such replacement that is reasonably acceptable to the Department.
10. Contractor Project Manager – means Richard Marsden from Deloitte Consulting LLP or such replacement that is reasonably acceptable to the Department.
11. Contractor Technology – is defined in Exhibit B, Article IV, Section B.
12. DCPS – is defined in Exhibit B, Article IV, Section E.
13. Defect – means a failure by a User Story Deliverable to materially meet its Acceptance Criteria or any applicable DTI Standard.
14. Definition of Ready – shall have the meaning set forth in Exhibit H.
15. Deliverables – means all materials, information, documents, and reports, whether finished, unfinished or draft, developed or prepared by Contractor or any of its

agents for delivery to the Department in the course of performing the Services, including all source code and source code modules, build scripts, data loading scripts, configurations and configuration scripts, templates and databases/tables but excluding any Contractor Technology. The Deliverables, including Sprint 0 Deliverables, are set forth in Exhibit C.

16. Department Project Director – means the designee initially appointed as such by the Department prior to the Effective Date of the Contract, which designee may be changed in the Department’s reasonable discretion upon at least five (5) days’ prior written notice to Contractor. The Department acknowledges and agrees that Contractor shall be entitled to rely on all information, decisions and approvals provided by the Department Project Director in connection with this Agreement, and that any such decisions and approvals shall be binding on the Department.
17. Department Project Manager – means the designee initially appointed as such by the Department prior to the Effective Date of the Contract, which designee may be changed in the Department’s reasonable discretion upon at least five (5) days’ prior written notice to Contractor. The Department acknowledges and agrees that Contractor shall be entitled to rely on all information, decisions and approvals provided by the Department Project Director in connection with this Agreement, and that any such decisions and approvals shall be binding on the Department.
18. Development Team – means the group of employees or agents of Contractor responsible for the development of the Product in accordance with this Agreement, which may be divided into smaller groups for purposes of developing the User Story Deliverables.
19. DTI – means the Department of Technology and Information of the State of Delaware.
20. DTI Standards – is defined in Exhibit B, Article II, Section B.3.
21. Epic – means a description from the end user perspective of one or more functions, the software for which may not be capable of being developed in a single Sprint and may be broken down into a number of User Stories.
22. Executive Product Owner – means the Product Owner responsible for overseeing the Product Owner Team, who shall be appointed by the Department prior to the Effective Date of the Agreement, which designee may be changed in the Department’s reasonable discretion upon at least five (5) days’ prior written notice to Contractor. The Executive Product Owner shall have executive decision-making authority and responsibility for final Product Backlog, Prioritization and User Acceptance. The Executive Product Owner also has authority over other assigned Product Owners, should there be disagreement.
23. Executive Steering Committee – means the governing body that has oversight and decision authority for the Project and is led by the Department’s Cabinet Secretary.

Two (2) or three (3) representatives of Contractor (as determined by Contractor) shall be included on the Executive Steering Committee.

24. Expected Velocity – means, for each Sprint other than Sprint 0, the total number of Story Points expected to be completed in such Sprint, as reasonably determined by the Contractor in consultation with the Department during Sprint 0, provided that the sum of the Expected Velocities of Sprint 1 through Sprint 12 shall equal the total number of Story Points for all Epics as determined by the Parties during Sprint 0.
25. FACTS I – is defined in Exhibit B, Article I, Section G.3.
26. Final UAT – shall have the meaning set forth in Exhibit B, Article I, Section G.3.
27. Final UAT Period – shall have the meaning set forth in Exhibit B, Article I, Section G.3.
28. Force Majeure – means, for either Party, any circumstance(s) beyond the reasonable control of that Party which has the effect of delaying, hindering or preventing (in whole or in part) performance, including acts of God, fire, accident, flood, explosion, war, civil disturbance, acts of terrorism, hurricanes, tornadoes, riots, and action or inaction by, or request of, any Governmental Entity (including any law).
29. Full Purchase Price – is defined in Exhibit B, Article I, Section J.1.
30. Go Live Acceptance – means that the Department has accepted the Product as satisfying the Go Live Criteria pursuant to the process set forth in Exhibit B, Article I, Section G.4.
31. Go Live Criteria – means each of the following:
 - a. Successful Completion of all User Stories with no Severity 1, 2, 3 or Urgent Severity 4 Defects;
 - b. All training performed and training guides completed according to training plans and schedules as required by the Agreement and mutually agreed during Sprint 0;
 - c. All Salesforce environments set up according to DTI Standards;
 - d. All data converted successfully from FACTS I and other agreed upon data sources as defined in the conversion strategy developed and accepted in Sprint 0 by the Department;
 - e. All security profiles and roles loaded into the system and tested successfully, as defined in the go live scenarios to be developed and accepted by the end of Sprint 11;

- f. All performance testing completed successfully according to its acceptance criteria;
 - g. Final UAT is Successfully Completed;
 - h. All regression test scenarios passed;
 - i. All deployment “runbooks” completed and accepted by the Department as defined in Exhibit C, RASCI Mapping; and
 - j. All knowledge transfer tasks completed successfully as defined in the Knowledge Transfer Plans developed by the Contractor and the Department’s designated Organizational Change Management Leader.
- 32. Impediment – means any problem, question or other issue that needs to be resolved to avoid blocking, impeding or slowing the development process.
 - 33. Incremental UAT – shall have the meaning set forth in Exhibit B, Article I, Section G.2.
 - 34. Incremental UAT Period – shall have the meaning set forth in Exhibit B, Article I, Section G.2.
 - 35. Indemnified Person – is defined in Exhibit B, Article VI, Section A.
 - 36. Intellectual Property – means (a) issued patents, pending patent applications and patent disclosures, whether or not reduced to practice, including any re-issuances, continuations, continuations-in-part, divisions, supplementary protection certificates, extensions and re-examinations thereof, (b) registered and unregistered trademarks, service marks, trade dress, trade names, domain names, uniform resource locators (URLs), and websites, logos and corporate names and intellectual property registrations and applications for registrations therefor, (c) registered and unregistered copyrights and mask works, (d) technical, manufacturing, development, production, marketing and scientific know-how, technology, information and data (including diagrams, charts, formulas and analytical methods), (e) trade secrets and other confidential information, (f) information technology rights, and (g) any other similar rights, whether tangible or intangible, and whether protected or not.
 - 37. Minimum Velocity Ratio – with respect to each Sprint (excluding Sprint 0), means 0.85.
 - 38. Personal Identifying Information or PII – means any information capable of individually identifying a natural person, in written or electronic form, that Contractor receives from the Department or its agents in connection with this Agreement.
 - 39. Personnel – is defined in Exhibit B, Article VII, Section B.

40. Preexisting Information – is defined in Exhibit B, Article IV, Section D.
41. Product – means the integrated case management software system Deliverables for the Department that successfully addresses each of the Epics listed on the Product Backlog (as amended in accordance with this Agreement and unless otherwise waived by the Department), which is commonly referred to as FACTS II and includes all Deliverables required hereunder, but excludes all third party software (including the force.com platform) whether or not such third party software is resold to the Department by DCPS pursuant to Exhibit B, Article XI, Section R.
42. Product Backlog – means a prioritized list of all Epics, which will include Contractor’s estimate of the effort by Contractor to develop the software to address each Epic and the priority of each Epic as determined by the Department in its sole discretion. The Product Backlog shall also include all User Stories for each Epic as such are prepared.
43. Product Increment – means a grouping of all User Story Deliverables contained in one or more sequential Sprints that will be subject to the Incremental User Acceptance Testing described in Exhibit B, Article I, Section G. There shall be four (4) or five (5) Product Increments as shall be mutually agreed by the Parties as part of Sprint 0.
44. Product Owner – means one of the 4 key representatives of the Department, each of which shall be appointed by the Department prior to the Effective Date of the Agreement, which designee may be changed in the Department’s reasonable discretion upon at least five (5) days’ prior written notice to Contractor.
45. Project – means the development of the Product on the terms and conditions set forth in this Agreement.
46. Project Completion Date – means the date on which the final Product is accepted by the Department in accordance with Exhibit B, Article I, Section G.4.
47. Project Term – means the period commencing on the Commencement Date and terminating on the Project Completion Date.
48. Salesforce License – shall have the meaning set forth in Exhibit B, Article II, Section B.1.
49. Scrum – means a form of Agile characterized by a development team’s ability to deliver results quickly and to respond and adapt to emerging requirements.
50. Scrum Master – means the Contractor facilitator for a product development team that uses Scrum. The Scrum Master shall be a member of the Development Team.
51. Services – mean the services to be performed by the Contractor under this Agreement as described in this Agreement. The Contractor shall perform the Services solely with respect to the Initial Epics. Additions, deletions or

modifications to Services and the Initial Epics shall be made subject to Exhibit B, Article I, Section D.5, below.

52. Severity 1 Defect – has the meaning given in Exhibit H.
53. Severity 2 Defect – has the meaning given in Exhibit H.
54. Severity 3 Defect – has the meaning given in Exhibit H.
55. Severity 4 Defect – has the meaning given in Exhibit H.
56. SFDC Delay Fees – shall have the meaning set forth in Exhibit B, Article X, Section B.
57. Sprint – means a set period of time during which the Development Team will work to develop the User Story Deliverables for the User Stories on the applicable Sprint Backlog, as more fully described in Exhibit H.
58. Sprint 0 – is defined in Exhibit B, Article I, Section C.4.
59. Sprint 0 Acceptance – means that all Sprint 0 Deliverables have been accepted pursuant to the process set forth in Exhibit B, Article I, Section E.1.d.
60. Sprint 0 Compensation – means One Million Five Hundred Thousand Dollars (\$1,500,000).
61. Sprint Acceptance Period – shall have the meaning set forth in Article I, Section G.1.
62. Sprint Backlog – means the list of User Stories listed on the Product Backlog to be addressed in a particular Sprint, which shall be assigned in accordance with Exhibit B, Article I, Section D.4.
63. Sprint Compensation – means, with respect to any Sprint other than Sprint 0, the amount determined by multiplying the number of Story Points for the User Stories Successfully Completed in such Sprint by the Story Point Compensation.
64. State – means the State of Delaware.
65. Statement – means this Statement of Agreement, which is part of the Agreement.
66. Story Point – means a measure of effort and complexity. During Sprint 0, Contractor shall determine the gross number of Story Points required to develop and implement each Initial Epic.
67. Story Point Compensation – means the Full Purchase Price minus the Acceptance Reserve, Warranty Reserve and Sprint 0 Compensation, with the sum divided by the gross number of Story Points as determined during Sprint 0.

- 68. Successfully Completed or Successful Completion – with respect to a User Story, means the associated User Story Deliverable has been accepted pursuant to Exhibit B, Article I, Section G.1.
- 69. Technical Requirements – means the technical and functional requirements set forth on Schedule A hereto, as such requirements may be refined or changed by mutual agreement in writing between the Parties in accordance with this Agreement.
- 70. Tracker – means the Agile tool owned by the Contractor that will be installed on the Force.com platform for use by the Parties in connection with the Project.
- 71. User Acceptance Test – the objective and measurable tests determined by the DEPARTMENT to confirm that each User Story Deliverable within a Product Increment or Product, as applicable, satisfies its Acceptance Criteria.
- 72. User Story – a description of the elemental steps of a particular function or functions within an Epic from an end-user perspective. Each User Story will be documented in the form set forth in Exhibit H. The Parties acknowledge that the User Stories may elaborate on the requirements included in the Epic, including the addition of workflows, validation rules, business rules, navigation strategy and/or wire frames, but shall not contain new interfaces or new reports without the consent of the Parties. Each User Story will be deemed complete when it meets the Definition of Ready.
- 73. User Story Deliverable – the software Deliverable developed by Contractor to address a User Story.
- 74. Velocity Ratio – means the amount determined by dividing the number of Story Points for the User Stories Successfully Completed in a particular Sprint by the Expected Velocity in such Sprint.
- 75. Warranty Period – means the twenty four (24) week period following Go Live Acceptance.
- 76. Warranty Reserve – means Three Million Four Hundred Thousand Dollars (\$3,400,000).

EXHIBIT B

STATEMENT OF AGREEMENT

ARTICLE I: PROJECT PRINCIPLES AND ACTIVITIES	11
A. Methodology and Product Vision	11
B. Platform.....	11
C. Timeline and Sprints	11
D. Product Backlog.....	12
E. Sprint 0.....	14
F. Sprints and Velocity.....	15
G. Acceptance	15
H. Meetings and Reports	18
I. Training.....	18
J. Payments and Reserves	19
ARTICLE II: DUTIES OF THE PARTIES.....	20
A. Duties of the Department	20
B. Duties of the Contractor	21
C. Duties of Both PARTIES.....	26
ARTICLE III: PAYMENT	26
A. Invoices	26
B. Requirement of Purchase Order.....	26
C. Withholding of Payments to the Contractor	27
D. Sovereignty	27
ARTICLE IV: INTELLECTUAL PROPERTY	27
ARTICLE V: WARRANTY.....	29
ARTICLE VI: INDEMNIFICATION	31

ARTICLE VII: EMPLOYEES	32
ARTICLE VIII: ANTI-DISCRIMINATION	32
A. Equal Employment Opportunity Practices.....	32
B. Non-Discrimination Provisions and Requirements	32
ARTICLE IX: TERMINATION.....	33
ARTICLE X: LIMITATION ON DAMAGES.....	35
ARTICLE XI: ADMINISTRATIVE PROCEDURES	35
A. Amendment, Modification and Waiver	35
B. Notice Between the Parties	36
C. Subcontracts	36
D. Non-Assignability	36
E. Interpretation.....	37
F. Qualifications to Conduct Business	37
G. Records and Audits	38
H. Assignment of Causes of Action Relating to Antitrust Laws	39
I. Use of Name	39
J. Severability	39
K. Force Majeure	39
L. No Waiver	40
M. No Violation of Law	40
N. No Discrimination.....	40
O. No Illegal Commissions.....	40
P. Neither Party is Drafter	41
Q. Public Records	41
R. Dealings with DCPS	41

S.	Survival of Certain Provisions	41
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WHEREAS, the Department has determined that:

The Original Agreement should be amended and restated on the terms and conditions set forth in this Agreement;

The Contractor possesses the necessary experience and skills and is equipped to efficiently and effectively perform the Services (as defined herein); and

The Contractor is willing to perform such Services on the terms and conditions herein.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants contained herein, the Parties hereby agree as follows:

ARTICLE I: PROJECT PRINCIPLES AND ACTIVITIES

- A. Methodology and Product Vision. The Product will be developed and implemented using a form of the Agile and Scrum methodologies, which will require close interaction, frequent communication and prompt decision and actions between the Parties. The Agile and Scrum methodologies are described in more detail in Exhibit H hereto. The Core Principles set forth on Exhibit J will guide the Parties interactions, subject to Exhibits A through I of the Agreement. This Agreement contemplates that the Parties will reach agreement on certain issues in the future, which is an inherent aspect of using Agile and Scrum. With respect to any provision herein that contemplates a future agreement between the Parties, (i) such provision should be interpreted to mean that each Party shall negotiate with the other Party in good faith and use commercially reasonable efforts to reach agreement on the applicable issue, (ii) such provision should not be deemed an unenforceable agreement to agree, and (iii) if a Party fails to use commercially reasonable efforts and/or fails to negotiate in good faith, such failure shall constitute a breach of this Agreement.
- B. Platform. The core platform for development and implementation of the Product and each User Story Deliverable shall be the platform provided by Salesforce.com, Inc., currently known as “Force.com,” as such platform exists or evolves during the term of this Agreement. The Department acknowledges and agrees that standard functionality of the Force.com platform will be used to the maximum extent possible to develop the Product. In that regard, any request by the Department to customize the Force.com platform where the standard functionality would have otherwise met the specifications required in the applicable User Story shall be documented in a change order pursuant to the process described in Article I, Section D.5.a, below.
- C. Timeline and Sprints
 - 1. Agreement Subject to Availability of Funds. This Agreement is entered into subject to the availability of funds for the Services, including Administration for Children and Families (“ACF”)-approved Federal funding. It is anticipated that the Department shall secure the requisite funding, however, in the event funding to the Department is not secured to allow for purchase of the indicated quantity of agreed upon Services, the Department shall notify the Contractor in writing immediately

upon becoming aware thereof. This Agreement shall be void without any further action being required and no payment shall be owed for services performed prior to the Commencement Date in the event the Department does not receive approval for ACF-approved Federal funding.

2. Agreement Terminable in Event of Exhaustion of Funds. The obligations of each Party under this Agreement shall terminate at the end of the last fiscal year for which appropriation is available (June 30 with respect to State funding or September 30 with respect to Federal funding) or upon the exhaustion of funds. The Department shall notify Contractor immediately upon becoming aware of any such unavailability or exhaustion of funds. Such termination shall be a termination for convenience pursuant to Article IX, Section B.
3. Anticipated Commencement Date. The Commencement Date shall be a mutually agreed upon date within ten (10) Business Days of the delivery of the Department's notice to the Contractor notifying the Contractor that all necessary funding, including the requisite ACF-approved Federal funding, has been secured, or April 25, 2016, whichever is later.
4. Project Length and Sprints. The Contractor and the Department agree that, subject to the terms and conditions herein, the Project is expected to be completed by the Anticipated Project Completion Date. The Project will be divided into thirteen (13) Sprints. The first Sprint ("Sprint 0") shall commence on the Commencement Date and shall terminate twelve (12) weeks later. The high level project timeline is set forth in Exhibit D.
5. Subject to Article IV (Intellectual Property), the Product, all User Story Deliverables and all other Deliverables shall be the property of the Department.

D. Product Backlog

1. Prioritizing. The Department has identified 451 Epics to be listed on the Product Backlog, which are listed on Schedule I hereto (the "Initial Epics"). During Sprint 0, (a) the Contractor shall estimate the number of Story Points required to develop the software to address each Initial Epic, which estimates shall be included on the Product Backlog, and (b) the Department shall list the Initial Epics on the Product Backlog in the order of priority to the Department. The Executive Product Owner has the ultimate authority of prioritizing all Initial Epics in case of disagreement.
2. User Stories. Prior to or during Sprint 0, the Department, in collaboration with the Development Team, shall develop and complete (as described in the User Story definition above) the User Stories for at least Sprints 1 and 2 based on the Expected Velocities of such Sprints at least thirty (30) days prior to the first day of Sprint 1 for the User Stories for Sprint 1 and at least two (2) weeks prior to the first day of Sprint 1 for the User Stories for Sprint 2. Thereafter, the Department shall continue to develop and complete User Stories so that at all times it has developed and completed User Stories for at least the next two (2) Sprints based on the

prioritization of the Product Backlog. As part of finalizing the User Stories, the Department, in consultation with the Contractor, shall document the Acceptance Criteria and User Acceptance Tests for each User Story.

3. Story Points. The Development Team shall determine the number of Story Points to be assigned to each User Story. The total number of Story Points for all User Stories within an Epic shall not exceed the number of Story Points determined for such Epic during Sprint 0.
4. Sprint Backlogs. The Development Team shall develop Sprint Backlogs during the planning phase at the start of each Sprint. Such Sprint Backlogs shall be comprised of enough User Stories so that, assuming that such User Stories are Successfully Completed at the end of such applicable Sprint, each Sprint (other than Sprint 0) will contain the Expected Velocity in such Sprint.
5. Adjustments
 - a. During the Project Term, the Department at its discretion may request changes to the Services (including to add or remove Epics and/or User Stories and to change any Technical Requirements). In such event, the Contractor shall estimate the impact to the level of effort required to develop the software to address such requested change and the Parties shall work in good faith to execute a change order pursuant to Article I, Section D.5.b, below. Contractor acknowledges that, as part of the change order process, the Department in consultation with the Contractor may simplify or eliminate existing Epics on the Product Backlog to permit the requested change to be addressed without increasing the amount of effort needed to finish the Product.
 - b. If any of the following events occur while the Contractor is engaged to provide the Services (each an “Impacting Event”), the Contractor shall be entitled to a change order in an amount reasonably calculated to eliminate all material adverse impacts to the extent caused by such event:
 - i. The scope, approach or timing of the Services change, including as a result of Article I, Section D.5.a, above, or any change to any applicable access, application, architecture, information, network, platform, privacy, security, system management and other standards and policies as documented at <http://dti.delaware.gov/information/standards-policies.shtml> (the “**DTI Standards**”),
 - ii. A change to the Service requested by the Department pursuant to Article I, Section D.5.a, above, or
 - iii. The Department fails to meet its obligations as set forth herein or in the Project Plan or other Deliverable to be developed as part of Sprint 0.

- c. The Contractor shall notify the Department within a reasonable period after becoming aware of an Impacting Event and shall use commercially reasonable efforts to mitigate the adverse impacts from any Impacting Event. Change orders will only be binding when signed by authorized representatives of each party.
- d. If the Parties fail to reach agreement with respect to a proposed change order within five (5) Business Days of the presentation of such proposed change order to the Department, then such issue shall be logged as an Impediment and escalated to the Executive Steering Committee for resolution. If the Executive Steering Committee is unable to reach a resolution, the issue shall be escalated for resolution to the Secretary of the Department and the Executive Sponsor of Contractor for resolution. If the issue is not resolved within fifteen (15) days of its entry as an Impediment, then the Department shall have a period of thirty (30) days within which to attempt to take other steps to resolve the issue. If the issue remains unresolved following the conclusion of such thirty (30) day period, then the Contractor may terminate this Agreement upon written notice to the Department. Upon such termination, the Department shall have the same rights and obligations as under a termination for convenience pursuant to Article IX.

E. Sprint 0.

- 1. Required Actions. In addition to the Sprint 0 activities set forth elsewhere in this Article I or in Exhibit C (RASCI Mapping), the Parties shall complete each of the items below during Sprint 0:
 - a. The Contractor shall provide no more than five (5) separate Agile/Scrum training courses on mutually agreed dates during Sprint 0, not to exceed four (4) hours in length each, to the Department's staff that will be involved with the Project (which is estimated to include seventy-five (75) to one hundred (100) individuals). The Department shall provide the facilities (including conference rooms), projectors and other technology necessary for the Contractor to conduct such training sessions.
 - b. Pursuant to Article I, Section D.1, the Parties shall finalize and validate the Product Backlog.
 - c. The Contractor shall develop a unit and integration testing strategy for the User Story Deliverables designed to demonstrate that each User Story Deliverable meets its Acceptance Criteria. The Department shall develop the User Acceptance Test strategy and scripts for each User Story Deliverable in consultation with the Contractor, and the Department shall exercise the User Acceptance Test scripts during each Incremental UAT and during Final UAT as described in Article I, Section G, below.

- d. The Contractor, in consultation with the Department, shall prepare all Sprint 0 Deliverables so that all Sprint 0 Deliverables meet the criteria set forth in Exhibit E, the Deliverable Expectation Document. The Department shall approve each Sprint 0 Deliverable that conforms in all material respects to the requirements therefor set forth in this Agreement. Approval of such a Deliverable shall be deemed given if the Department has not provided Contractor with written notice of such approval or with written notice that a Deliverable does not conform with the foregoing within the review period for the applicable Deliverable set forth in Exhibit C.
 - e. With respect to those Technical Requirements identified as “Use Case Testing” in Schedule A, the Department, in consultation with the Consultant, will map such Technical Requirements to Initial Epics. The Technical Requirements that are mapped to Initial Epics shall be included as part of the Acceptance Criteria for the User Stories that are part of such Initial Epics and not for any other User Stories.
- F. Sprints and Velocity. During each Sprint (other than Sprint 0), the Contractor shall cause the Development Team to work diligently and efficiently to develop the User Story Deliverables on the Sprint Backlog for such Sprint and shall use commercially reasonable efforts to ensure that the Development Team has a Velocity Ratio of no less than the Minimum Velocity Ratio for each such Sprint. If the Aggregate Velocity Ratio falls below the Minimum Velocity Ratio, the Department shall promptly notify the Contractor in writing. Promptly following receipt of any such notice, the Contractor shall (i) take all commercially reasonable actions to ensure that the Velocity Ratio for the next Sprint is not less than the Minimum Velocity Ratio and, if applicable, that the Aggregate Velocity Ratio is increased to be equal to or above the Minimum Velocity Ratio by the end of the next Sprint, and (ii) notify the Department in writing of all actions it intends to take to increase the Velocity Ratio for the next Sprint. If the Aggregate Velocity Ratio is below the Minimum Velocity Ratio for two consecutive Sprints, the Department shall have the right to terminate this Agreement for cause pursuant to and in accordance with Article IX, Section A. Termination of the Agreement pursuant to this section shall not affect the Department’s (i) ownership rights with respect to any User Story Deliverable for which full payment is made to Contractor, or (ii) obligations to pay the Contractor for such User Story Deliverables pursuant to other provisions of this Agreement. For clarification, to the extent that any Force Majeure Event or Impacting Event causes the Velocity Ratio or Aggregate Velocity Ratio to fall below the Minimum Velocity Ratio, in whole or in part, the foregoing termination right shall not apply.
- G. Acceptance
 - 1. Sprint Acceptance. During the five (5) Business Days immediate prior to the final Sprint review meeting at the end of a Sprint (the “Sprint Acceptance Period”), the Department shall review Contractor’s test results for the User Story Deliverables developed as part of such Sprint and promptly notify the Contractor of such test results being published to Tracker if the test results show a Defect in the applicable

User Story Deliverable, which notification shall be given by logging the applicable Defect in Tracker in reasonably sufficient detail to describe the Defect. Contractor shall work to resolve Defects logged by the Department within the Sprint Acceptance Period according to the foregoing process.

At the final Sprint review meeting for the applicable Sprint, the Contractor shall present to the Department the final test results for the User Story Deliverables developed as part of such Sprint. Each such User Story Deliverable shall be deemed to be accepted by the Department immediately following such final Sprint review meeting unless Defects logged by the Department during the Sprint Acceptance Period remain unresolved. If any such Defects remain unresolved, except as otherwise agreed by the Department and Contractor in writing, the applicable User Story shall go back onto the Product Backlog and Contractor shall determine, in consultation with the Department, into which subsequent Sprint such User Story will be assigned.

2. Incremental User Acceptance Testing. During the two (2) week period commencing on the day after the final Sprint review meeting at the end of the last Sprint comprising a Product Increment (the “Incremental UAT Period”), the Department shall perform User Acceptance Testing on the User Story Deliverables included in such Product Increment to confirm such User Story Deliverables, when integrated together, do not contain any Defects (the “Incremental UAT”). During the Incremental UAT Period, the Department shall notify the Contractor of any such Defects identified, which notification shall be given by logging the applicable Defect in Tracker in reasonably sufficient detail to describe the Defect. Concurrent with progress on subsequent Sprints, Contractor shall work diligently to resolve Defects that are logged by the Department within the Incremental UAT Period according to the foregoing process.
3. Final User Acceptance Testing. During the eight (8) week period following the final Sprint and the Successful Completion of all regression testing as referenced in Exhibit C, RASCI Mapping (the “Final UAT Period”), the Department shall perform User Acceptance Testing on the final Product, including the execution of test scenarios using converted data from FACTS I, to confirm that all User Story Deliverables, when integrated together, do not contain any Defects (the “Final UAT”). The Department will schedule its work at a sufficient pace so that the majority of test scripts will be executed during the first five (5) weeks of the Final UAT Period. If no such Defects are identified by the Department, the Executive Product Owner shall notify the Contractor of the Product acceptance in writing within the Final UAT Period. The Executive Product Owner shall have five (5) Business Days to notify the Contractor of any such Defects identified during the Final UAT Period, which notification shall be given by validating the applicable Defect that has been logged in Tracker in reasonably sufficient detail to describe the Defect. If the Department does not thus notify the Contractor within the Final UAT Period or if the Department uses the Product in production, the Product shall be deemed accepted by the Department. Contractor shall promptly fix all Defects about which it is notified in writing during the Final UAT Period pursuant to this

Article I, Section G.3 and deliver the Product to the Department for re-review. The Department shall then have five (5) Business Days to re-review the Product solely for purposes of confirming that the previously identified Defects have been resolved./Go Live Acceptance. The Contractor shall take all steps necessary for the Go Live Criteria to be met. Upon notification by the Contractor that the Go Live Criteria are ready for verification by the Department, the Department shall have two (2) weeks to review the Go Live Criteria and notify the Contractor whether the Go Live Criteria are met and thus shall be accepted (“Go Live Acceptance”). If met, the Department shall notify the Contractor of Go Live Acceptance by the end of such two (2) weeks. If the Go Live Criteria are not met, the Executive Product Owner shall have three (3) Business Days from discovery that any Go Live Criteria are not met to notify the Contractor, and in no event later than the end of such two (2) week period, which notification shall be given by logging the applicable deficiency in Tracker in reasonably sufficient detail to describe the manner in which any Go Live Criteria is not met. If the Department does not thus notify the Contractor within such two (2) week period or if the Department uses the Product in production, the Go Live Criteria shall be deemed met. Upon receipt of any such notice of Go Live Criteria not being met, Contractor shall promptly correct all identified deficiencies in the Go Live Criteria and submit to the Department for re-review. The Department shall then have five (5) Business Days to re-review solely for purposes of confirming that the previously identified Go Live Criteria have been met. If the Go Live Criteria are not met solely due to any failure by the Department to meet its obligations as set forth herein or in the Project Plan or other Deliverables to be developed as part of Sprint 0, then the Go Live Criteria shall be deemed accepted solely for purposes of releasing the Acceptance Reserve and releasing the Contractor from any further liability for liquidated damages pursuant to Article I, Section J.5, below.

4. Paper Deliverables. The Department shall approve each paper Deliverable that conforms in all material respects to the requirements therefor set forth in this Agreement. Approval of such a Deliverable shall be deemed given if the Department has not provided Contractor with written notice of such approval or with written notice that a Deliverable does not conform with the foregoing within the review period for the applicable Deliverable set forth in Exhibit C.
5. Reliance on Acceptance. At any time, if an approved Deliverable differs the requirements therefor, the requirements therefore shall be deemed modified to conform to such approved Deliverable. To the extent that a Deliverable has been approved at any stage of Contractor's performance, Contractor shall be entitled to rely on such approval for purposes of Contractor's subsequent performance; provided that, for clarity, the Department's performance of the Incremental UAT described in Article I, Section G.2, above, shall not prevent the Department from identifying Defects during the Final UAT described in Article I, Section G.3, above.

H. Meetings and Reports

1. Stand Up Meetings. In addition to any meetings contemplated by Exhibit H hereto, during each Sprint, the Contractor shall ensure that the Scrum Masters hold daily standup meetings with the Development Team to discuss the status of the Project, the development of the applicable User Story Deliverables and any Impediments. The Contractor shall notify the Department reasonably in advance of the time and location of each such meeting. Each Product Owner or his or her designee shall attend the standup meetings applicable to that Product Owner, and the Executive Product Owner or his or her designee shall attend the overall project daily standup meeting.
2. Impediment List. In addition to any other lists or logs contemplated by Exhibit H, at all times during the Project Term, the Contractor shall maintain an updated list of all outstanding Impediments. The Department shall have full access to the list of Impediments and the Parties agree to discuss the Impediments on a daily basis. The Parties shall resolve Impediments in a timely fashion. The Contractor shall promptly notify the Department Project Director and the Executive Steering Committee of any Impediment that remains unresolved for more than two Business Days.
3. Weekly Reports. In addition to any other reports contemplated by Exhibit H, on or prior to Friday of each week during the Project Term, the Contractor shall submit to the Department a detailed Weekly Status Report substantially in a form to which the Parties have agreed. The report shall include, among other things, a list of current Impediments, potential risks, required Project metrics, an assessment of the Project's progress, an accurate accounting of the fees paid or payable hereunder through the date of the report, a forecast of the fees to be incurred through completion of the Project and an estimate of the amount of time needed to complete the Project.
4. Additional Information. The Contractor agrees that the Department is entitled to full and accurate information regarding the Project and its progress, and the Contractor shall promptly (and in all events within two (2) Business Days) respond to any questions or requests for information by the Department regarding the development of the Product or a User Story Deliverable and/or the progress of the Project. The Department agrees that its participation in the development process is important, and the Department shall promptly (and in all events within two (2) Business Days) respond to any questions or requests for information by the Contractor regarding User Stories, Epics and/or the development of the Product or any User Story Deliverable.

I. Training

1. Agile Training. Pursuant to Article I, Section E, the Contractor shall provide Agile/Scrum training during Sprint 0 to the Department's staff that will be involved with the Project.

2. Product Training. Following completion of the Product, the Contractor shall provide training on the use, administration, support and maintenance of the Product to the applicable members of the Department's staff as designated by the Department, including training the Department's designated training staff (*i.e.*, train-the-trainer) so the Department's training staff can provide the requisite training to all Product users in accordance with the training plan developed in Sprint 0. This training is more fully described in Exhibit I.

J. Payments and Reserves

1. Total Compensation. Notwithstanding anything herein to the contrary, the Parties agree that, subject to any amendments or change orders, the total compensation to be paid to the Contractor for the Services provided under this Agreement shall not exceed Seventeen Million Nine Hundred Forty-Seven Thousand Eight Hundred Seventy-Eight Dollars (\$17,947,878) (the "Full Purchase Price").
2. Warranty Reserve. The Department shall pay the Warranty Reserve to the Contractor in accordance with the following schedule:

% of Warranty Reserve to be Invoiced	Invoice Date
10%	End of Week 4 of the Warranty Period
10%	End of Week 8 of the Warranty Period
10%	End of Week 12 of the Warranty Period
10%	End of Week 16 of the Warranty Period
10%	End of Week 20 of the Warranty Period
50%	The first date following the end of the Warranty Period that all Severity 1, 2 and 3 Defects and all Urgent Severity 4 Defects (as defined in Exhibit H) that were reported in writing to the Contractor during the Warranty Period are resolved

3. Sprint Payments. At the end of each Sprint, the Department shall pay to the Contractor, in accordance with Article III, Section A, an amount equal to (a) for Sprint 0, upon Sprint 0 Acceptance, the Sprint 0 Compensation, and (b) for all other Sprints, the applicable Sprint Compensation.

4. Acceptance Reserve. The Department shall pay the Acceptance Reserve to the Contractor at Go Live Acceptance in accordance with Article I, Section G.4 above.
5. Liquidated Damages. The Parties acknowledge that the timely completion of the Project is imperative to the Department's operations, that any failure to complete the Project timely may cause irreparable harm to the Department, and that the damages to the Department caused by a delayed completion of the Project would be difficult to calculate with any degree of certainty. As such, if Go Live Acceptance pursuant to Article I, Section G.4 has not occurred on or prior to the Anticipated Project Completion Date, the Contractor shall be liable for liquidated damages in the amount of \$100,000 for each full calendar month following the Anticipated Project Completion Date until final acceptance of the Product, not to exceed \$600,000. The Contractor agrees that such amounts are genuine estimates of the damages that the Department will suffer in the event of a delayed completion of the Project and are not a penalty. The Department may deduct the amount of any liquidated damages due hereunder from the Warranty Reserve. Notwithstanding the foregoing, Contractor shall not be liable for any such liquidated damages to the extent the delay is caused by events outside the reasonable control of Contractor, including any Force Majeure Event or Impacting Event. Assessment by the Department of liquidated damages pursuant to this Article I, Section J.5 shall not limit remedies available to Department under this Agreement, at law, or in equity. Liquidated damages shall count towards, and be included in, the overall limitation on damages of Eight Million Dollars (\$8,000,000) set forth in Article X, Section A, below.

ARTICLE II: DUTIES OF THE PARTIES

- A. Duties of the Department. In addition to the other activities required by the Department elsewhere in this Agreement, the Department shall:
 1. Ensure that each Product Owner and the Department Project Director dedicate sufficient time, effort, and necessary and qualified resources to performing their respective obligations hereunder and responding promptly to any questions from the Contractor or any of its agents, including the Development Team.
 2. Provide the Contractor in a timely manner as necessary for the successful completion of the project with all decisions, information and/or resources that the Contractor may reasonably request in order to perform the Services.
 3. Cooperate with the Contractor in the performance by the Contractor of the Services, including (i) providing the Contractor with adequate working space, equipment and facilities and timely, reasonable access to data, information, and personnel of the Department; (ii) providing experienced and qualified personnel having appropriate skills to perform their assigned tasks and duties in a competent and timely fashion; (iii) providing the Contractor with access to Force.com under the Department's license, and (iv) promptly notifying Contractor of any issues, concerns or disputes with respect to the Services. The Department shall be responsible for the

performance of its personnel and agents and for the accuracy and completeness of all data and information provided to the Contractor for purposes of the performance of the Services. The Department acknowledges and agrees that Contractor's performance is dependent on the Department's timely and effective satisfaction of the Department's responsibilities under this Agreement and timely decisions and approvals of the Department in connection with the Services.

4. The Department shall at all times employ industry-standard virus detection and vulnerability prevention procedures. As the Contractor will not be providing disaster recovery or business continuity services hereunder, the Department shall remain responsible for ensuring proper and adequate back-up and storage procedures.

B. Duties of the Contractor. In addition to the other activities required by the Contractor elsewhere in this Agreement, the Contractor shall perform each of the following or otherwise agrees as follows:

1. Access to and use of Force.com by the Contractor and its employees, agents and subcontractors under the Department's license with Salesforce.com, Inc. (the "Salesforce License"), shall be in conformance with this Agreement and with all terms and conditions of the Salesforce License. The Contractor may exercise such access and use solely for performing Services hereunder and not for the benefit of any third party.
2. The Contractor shall be responsible for the professional quality, timely completion, and coordination of all Services furnished by the Contractor, its subcontractors and its and their principals, officers, employees and agents in accordance with this Agreement. In performing the Services, the Contractor shall follow practices consistent with generally accepted professional and industry standards.
3. The Contractor shall perform the Services hereunder, and develop the User Story Deliverables and all other Deliverables furnished to the Department, in compliance with all applicable access, application, architecture, information, network, platform, privacy, security, system management and other standards and policies as documented at <http://dti.delaware.gov/information/standards-policies.shtml> as of the Effective Date, as modified and/or clarified by the DTI Standards Analysis Deliverable of Sprint 0 (the "DTI Standards").
4. Development Team. The Contractor shall ensure that the Development Team is at all times a team of employees or contractors of the Contractor having, in the aggregate across the entirety of the Development Team, the requisite business skills (including skills and experience with child welfare, SACWIS, youth rehabilitation and prevention, behavioral health and related financial/eligibility and contract operations), technical skills (including skills and experience with Force.com, database architecture, system integration, Agile and Scrum) and experience to define, design, develop and test the Product, the Product Increments and the User Story Deliverables on the timelines contemplated herein.

5. Security. Computer, network, and information security is of paramount concern for the State and DTI. The Contractor's obligations under this Agreement with regard to cybersecurity and detection of vulnerabilities will be to use industry-standard procedures to test the Product, each Product Increment and each User Story Deliverable for such vulnerabilities before delivering them to the Department and to have in place administrative, physical, and technical safeguards designed to protect the confidentiality, integrity, and availability of the electronic confidential information that it receives, maintains or transmits on behalf of the Department in connection with this Agreement. In the event that the Contractor or any of its agents becomes aware of any unauthorized access to PII received from the Department in the Contractor's control, the Contractor shall promptly notify the Department of such unauthorized access and reasonably cooperate with the Department in complying with any Department notification obligations required by applicable law. To the extent that such unauthorized access arises out of the Contractor's negligence, intentional misconduct, or breach of this Agreement, then, to the extent such Department notification is required by applicable law, the Contractor shall reimburse the Department for the reasonable out-of-pocket costs of notifying such affected individuals and other remediation costs.
6. Encryption. The Contractor will encrypt, and will cause its subcontractors and other agents to encrypt, all PII that is received, created or transmitted by the Contractor, its subcontractors or other agents from the Department or its agents pursuant to the performance of the Services while such PII is stored on laptop computers or other portable storage devices (such as PDAs, smartphones, or USB drives) of Contractor, its subcontractors or other agents or transmitted over or from Contractor's networks.
7. The Contractor shall appoint a Contractor Project Manager who will manage the performance of the Services. Primarily, the Services shall be performed by the Contractor Project Manager or by the Development Team under the personal supervision of the Contractor Project Manager.
8. The Contractor's assignment of staffing of the following roles on the Development Team – the Project Directors, Project Manager, Account Manager, Functional Leads, Subject Matter Experts, Scrum Masters, Designers and solution/system architects – is subject to review and approval by the Department, such approval not to be unreasonably withheld. For any staffing transferred off the Development Team, including for unforeseeable circumstances, the Contractor will notify the Department promptly and work out a transition and replacement plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Any replacement staff shall be subject to review and approval by the Department, not to be unreasonably withheld. Upon receipt of written notice from the Department that an employee of the Contractor is unsuitable to the Department for good cause, the Contractor shall remove such employee from the performance of Services and substitute in his/her place a suitable employee.

9. The Contractor shall furnish for review to the Department's designated representative copies of all correspondence with regulatory agencies describing or discussing the Services prior to mailing such correspondence, if permitted by applicable law or regulation.
10. The Contractor has or will retain such employees and permitted subcontractors as it may need to perform the Services. Such employees and permitted subcontractors shall not be employed by the State or any other political subdivision of the State.
11. The Contractor will not use the State's or the Department's name, either express or by implication such that a reasonable recipient would realize the identity thereof, in any of its advertising or sales materials without the Department's prior written consent.
12. The Contractor shall comply with all applicable State and Federal licensing standards and all other applicable standards as required to perform the Services hereunder.
 - a. The Contractor shall immediately notify the Department in writing upon becoming aware of any loss of any professional accreditations or other licenses or certifications of the Contractor required by applicable law. If this change in status is the result of the Contractor's accreditation, licensure, or certification being suspended or revoked, the Contractor understands that such change is grounds for termination of this Agreement for cause pursuant to Article IX, Section A. The Contractor shall notify the Department of any criminal charges against or criminal investigations of the Contractor.
 - b. By executing this Agreement, the Contractor represents that the Contractor and its subcontractors (to the best of its knowledge, and based on the same representation obtained from such subcontractors) are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded for procurement or non-procurement activities by any Federal Government department or agency.
13. In performing the Services, the Contractor shall comply with applicable published Federal and State laws and regulations (*e.g.*, Health Insurance Portability and Accountability Act (HIPAA) of 1996) pertinent to performing the Services.
 - a. If applicable, the Contractor agrees to comply with all the terms, requirements, and provisions of the Drug-Free Work Place Act of 1988 as detailed in the Governor's Certification Regarding Drug-Free Work Place Requirements that has been provided to the Contractor by the Department.
14. Confidentiality and Data Integrity. All data on a State network or system or that is generated by use of a State network or system, other than Contractor Technology or Preexisting Data as provided in Article IV below, is and shall be the property of the State. The State and DTI shall retain control of the disclosure of such data subject to the terms of Article II, Section C.1 below. Contractor, when performing

Services hereunder, is responsible for safeguarding the State's data and computer files while in the Contractor's control or being accessed by the Contractor. Contractor will not disclose, or modify State data or State computer files without the written authorization of DTI except as permitted in the Agreement and will use such data and files only as reasonably necessary in its performance of the Services. Furthermore, Contractor shall take all reasonable precautions to prevent unauthorized use, disclosure, or modification of State computer files except as permitted in the Agreement, and should alert the Department of any situation which it expects or which would reasonably be expected to result in unauthorized use, disclosure or modification of State data. Penalty for unauthorized use, unauthorized modification of data files, or disclosure of any confidential information may include prosecution under applicable State or Federal law. The Contractor shall be responsible for compliance therewith by its personnel and permitted subcontractors.

15. Cooperation with Third Parties. The Contractor shall reasonably cooperate with any party, contractor, consultant, or agency identified by the Department in writing in connection with the Contractor's performance of the Services under this Agreement.
16. Independent Contractor Status
 - a. It is understood that in the performance of the Services hereunder, the Contractor shall be, and is, an independent contractor and is not an agent or employee of the State and shall furnish such Services in its own manner and method, except as required by this Agreement. The Contractor shall be solely responsible for, and shall indemnify, defend and hold each Indemnified Person harmless from and against all claims brought by the Contractor's employees for payment of social security, withholding, and all other wages, salaries, benefits, taxes, exactions, and other employment-related payments of any nature whatsoever.
 - b. The Contractor acknowledges that the Contractor and any subcontractors, agents or employees employed by the Contractor shall not, under any circumstances, be considered employees of the State, and that they shall not be entitled to any of the benefits or rights afforded employees of the State, including sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Neither the State nor the Department will provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of the Contractor or any of its officers, employees or other agents.
 - c. The Contractor shall be responsible for providing liability insurance for its personnel.
 - d. As an independent contractor, the Contractor has no authority to bind or commit the State. Nothing herein shall be deemed or construed to create a

joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

- e. Recognizing that it is operating as an independent contractor, the Contractor shall indemnify, defend and hold each Indemnified Person harmless from and against any liability that may arise from any third party claims (including claims by the Contractor's personnel) of bodily injury, death or damage to real or tangible personal property to the extent caused by the Contractor's negligence or willful misconduct.

17. Insurance

- a. The Contractor, at its expense, shall carry and maintain in force during the term of this Agreement the following insurance, on policy forms and with insurance companies authorized or permitted to do business in the jurisdictions where the Services are to be performed, at the indicated minimum coverage limits:
 - i. Worker's Compensation in accordance with applicable law and Employer's Liability Insurance - \$500,000 per accident/per employee; and such other insurance as may be required by law. These policies shall include a waiver of subrogation to the State and the Department.
 - ii. Commercial General Liability, including Contractual Liability and liability for Products and Completed Operations, in a combined limit for Bodily Injury and Property Damage - \$1,000,000.00 per occurrence/\$3,000,000 aggregate.
 - iii. Professional Liability or Miscellaneous Errors and Omissions - \$1,000,000.00 per claim /\$3,000,000 aggregate.
 - iv. If required to transport state employees, Automotive Liability Insurance covering all automotive units used in the performance of the Services with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others or \$1,000,000 combined single limit per accident.
- b. Before performing any Services, the Certificate of Insurance indicating the required insurance policies, referencing the contract number stated herein, shall be provided to the Department. Such certificates shall include a provision that the insurer will endeavor to give the policyholder first named insured at least thirty (30) days' advance notice of any changes in, cancellation of or non-renewal of coverage, and in turn the Contractor shall provide similar notice to the Department in the event it is not replaced by coverage of like kind and substance. Contractor shall require that any subcontractor it employs carry the same coverage in the same limits as set

out above, or coverage commensurate with the risks presented by such subcontractor in performance of its Services under the Agreement and any other coverage as Contractor deems appropriate, and shall provide proof. The foregoing minimum limits of liability may be satisfied through any combination of primary and/or umbrella/excess liability policies.

- c. The Department shall not be named as Additional Insured on any certificate of insurance.

C. Duties of Both PARTIES

Confidentiality. Both Parties shall establish appropriate restrictions and safeguards against access by unauthorized personnel to all confidential data and records. Applicable Federal and State statutes and regulations and this Agreement shall govern the confidentiality of all data, records, and information obtained by the Contractor or the Department (the “Receiving Party”), including receipt by Contractor of State data and State computer files from the other Party (the “Disclosing Party”). The Receiving Party shall not disclose such information to any third party without the Disclosing Party’s prior written consent. The Receiving Party shall use at least the same degree of care as it employees in maintaining in confidence its own confidential information of a similar nature, but in no event less than a reasonable degree of care. The Disclosing Party hereby consents to the Receiving Party disclosing such information (subject to applicable statutes and regulations): (i) to permitted subcontractors that are providing services in connection with this Agreement and that have agreed to be bound by confidentiality obligations similar to those in this paragraph, (ii) as may be required by law, regulation, judicial or administrative process, or in accordance with applicable professional standards or rules, or (iii) to the extent such information (A) is or becomes publicly available other than as the result of a disclosure in breach hereof, (B) becomes available to the Receiving Party on a nonconfidential basis from a source that is not prohibited from disclosing such information to the Receiving Party, (C) is already known by the Receiving Party without any obligation of confidentiality with respect thereto, or (D) is developed by the Receiving Party independently of any disclosures made to the Receiving Party.

ARTICLE III: PAYMENT

- A. Invoices. The Contractor shall invoice the Department for amounts owed to it in accordance with Article I, Section J. The Department shall pay all properly submitted amounts reflected on the Contractor’s invoice that are not disputed in accordance with Article III, Section C, below, within thirty (30) days of receipt thereof, subject to Article III, Section D. below. Without limiting its rights or remedies, upon ten (10) days’ prior written notice, the Contractor may halt or terminate performance of the Services if payment of a properly submitted, correct invoice is not received within sixty (60) days of receipt by the Department and the Department does not thereafter make such payment within such ten (10) day notice period.
- B. Requirement of Purchase Order. This Agreement is subject to the approval of a Purchase Order by the Secretary of the Department of Finance of the State. Neither the State nor the

Department shall be liable for expenditures made or Services delivered prior to the approval of a State Purchase Order for these Services and the Contractor shall not be required to provide any Services hereunder until it receives such approved Purchase Order.

- C. Withholding of Payments to the Contractor. In the event the Department disputes in good faith an invoice or portion thereof, the Department may withhold payment of such disputed amount, provided that within thirty days of receipt of the applicable invoice, the Department provides a written notice of dispute to the Contractor, reasonably describing the basis thereof (an “Invoice Dispute Notice”). In no event shall the Department be liable for payment for Services provided for which (i) the Contractor has not provided an accurate invoice, including any details that the Parties have agreed in writing are to be included in an invoice, and (ii) the Department has thereafter reasonably requested or demanded via a timely Invoice Dispute Notice such missing detail or correction of billing, as applicable, for any Services provided for the period of time at issue, and (iii) the Contractor has thereafter failed to provide corrected billing or requested detail, as applicable, following receipt of such a request or demand for such detail or corrected billing.
- D. Sovereignty. Delaware is a sovereign entity and shall not be liable for the payment of any Federal, State or local sales, use or excise taxes, including any interest and penalties from any related deficiency, which may become due or payable as a consequence of this Agreement.

ARTICLE IV: INTELLECTUAL PROPERTY

- A. The Contractor hereby agrees that the Services are being performed as a work for hire and, except for any Contractor Technology contained therein, the Contractor hereby grants and assigns to the Department upon payment to Contractor of the Sprint Compensation for the applicable User Story Deliverable, and the Department hereby accepts, the entire right, title, and interest of the Contractor in and to all Intellectual Property, and any and all other proprietary rights in, or based on, the applicable User Story Deliverable rendered to the Department by the Contractor pursuant to this Agreement. The Contractor shall not be liable for damages, claims, and losses arising out of any reuse of any work product or Deliverable on any other project conducted by the Department. The Contractor shall, at the Department’s expense, reasonably assist the Department in obtaining the Intellectual Property as allocated hereunder in all countries in the world. Such assistance shall include execution of all documents reasonably required by the Department.
- B. The Contractor retains all title and interest to any data, tools or methodologies that it alone furnished in performing the Services, including Tracker, and all modifications and derivatives thereof (collectively, the “Contractor Technology”). Retention of such title and interest to Contractor Technology shall not conflict with the Department’s rights to the Deliverables. To the extent that any Contractor Technology is embedded or otherwise incorporated in the Product, in any User Story Deliverable or in any other Deliverable, upon payment to Contractor for the applicable Deliverable in accordance with this Agreement, the Contractor hereby grants to the Department a perpetual, nontransferable, non-exclusive, fully paid-up, royalty-free, worldwide right and license to use, copy, modify and prepare derivative works of all Contractor Technology in which the Contractor retains

title that is contained in a Deliverable in connection with the Department's or the State's use of such Deliverable. The parties will cooperate with each other and execute such other documents as may be necessary to achieve the objectives of this Section.

- C. In no event shall the Contractor be precluded from developing for itself, or for others, materials that are competitive with the Deliverables. In addition, the Contractor shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the Services.
- D. Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all Intellectual Property or other proprietary data owned by the Contractor prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of the Contractor even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. To the extent that any Preexisting Information is embedded or otherwise incorporated in the Product, in any User Story Deliverable or in any other Deliverable, upon payment to the CONTACTOR for the applicable Deliverable in accordance with this Agreement, the Contractor hereby grants to the Department a perpetual, nontransferable, non-exclusive, fully paid-up, royalty-free, worldwide right and license to use, copy, modify and prepare derivative works of all such Preexisting Information in connection with the Department's or the State's use of such Product, User Story Deliverable or other Deliverable. The parties will cooperate with each other and execute such other documents as may be necessary to achieve the objectives of this Section.
- E. To the extent that any Contractor Technology provided to the Department hereunder constitutes merchandise within the meaning of section 471 of the Internal Revenue Code, such Contractor Technology is licensed to the Department by the Contractor as agent for Deloitte Consulting Product Services LLC (its wholly-owned subsidiary)("DCPS"). The assignment and license grant in this Article do not apply to any software, hardware, other products or materials (including any modifications or enhancements thereto or derivative works based thereon) that is subject to a separate license agreement between the Department and any third party, including DCPS.
- F. Upon payment to Contractor for the applicable Deliverable in accordance with this Agreement, the Department hereby grants to the Contractor a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license (with right to sublicense and the right of sublicensees to sublicense further) to use, make, execute, reproduce, sell, display, perform, distribute, modify or otherwise prepare derivative works based on, any or all of the Product, User Story Deliverables, and other Deliverables, and any derivatives thereof, and all intellectual property rights therein.
- G. The Contractor hereby grants to the State a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license to use, make, execute, reproduce, display, perform, modify or otherwise prepare derivative works based on, Tracker, and any derivatives thereof, and all intellectual property rights therein. This license to Tracker shall extend to contractors of the State solely with respect to services being performed for or on behalf of the State,

subject to agreement by such contractors to maintain the confidentiality of Tracker and to use it solely on behalf of the State in connection with such services for the State. Notwithstanding the foregoing, the State shall not have the right to sublicense Tracker, and the State shall not have rights to receive any updates or revisions to Tracker from Contractor absent further agreement of the Parties. To the extent Tracker constitutes inventory within the meaning of section 471 of the Internal Revenue Code, such is licensed to the State by Contractor as agent for its product company subsidiary on the terms and conditions contained herein.

ARTICLE V: WARRANTY

A. The Contractor hereby represents and warrants that:

1. The Services will be performed in a prompt and professional manner in accordance with industry standards.
2. It owns all right, title and interest in and to, or has sufficient right, title and interest in, the Services, Contractor Technology and Preexisting Information to provide the Services as set forth in the Agreement and to assign the ownership rights and license rights to the Product, each User Story Deliverable and all other Deliverables as required in this Agreement.
3. The Services, the Contractor Technology and Preexisting Information do not infringe any patent, copyright, trade secret or other intellectual property rights of any third party.
4. Contractor will use commercially reasonable efforts to assure that the Product, each User Story Deliverable and all other Deliverables (i) shall not contain, nor shall use of them introduce into the Department or State or DTI computer systems, any defect, device, computer virus or other software routine (*e.g.*, back door, time bomb, Trojan horse, worm) that will disable, lock, erase or otherwise harm software, hardware or data; (ii) shall not contain any other “lockout,” self-help code or other disabling code or device that would otherwise prevent or restrict use of the Product, any User Story Deliverable or any other Deliverable (*e.g.*, password, CPU or time restrictions); or (iii) shall not contain any malware, web bugs, spyware, adware or similar code or devices. Contractor shall not negligently or intentionally introduce any of the codes or devices referred to in (i), (ii) or (iii) into its system or software or otherwise negligently or intentionally remove, alter or interface with the system or software for the purpose of preventing the Department’s use thereof or otherwise exercise electronic or physical self-help.
5. The Department shall own, free and clear of all encumbrances, all right, title and interest in and to the User Story Deliverables, the Product and other Deliverables subject to and in accordance with the terms of Article IV above.

B. In the event of a breach of the warranties set forth in Article V, Section A, Contractor, at its expense, shall correct (by repair, replacement or re-performance) such breach as soon as possible, but not more than thirty (30) days after notice from the Department. If the

breach is not so corrected, then the Department, at its option, may either (i) extend the time for the Contractor to correct such breach, if correction is commercially reasonable; (ii) negotiate an appropriate reduction in or refund of the Contractor's compensation for the applicable term of the Agreement; or (iii) terminate the Agreement for cause. If the Department selects option (i) but the breach is still not corrected within the extended time, the Department shall have the same options again.

- C. During the Warranty Period, the Contractor warrants that the Product shall operate free of any Severity 1, Severity 2 or Severity 3 Defects and of any Urgent Severity 4 Defects or else shall be remedied pursuant to and subject to the terms of Article V, Section D, below.
- D. If, within the Warranty Period, the Product fails to comply with the warranty as stated in the Article V, Section C, above, the Contractor shall repair the Product as necessary to bring the Product into compliance with such warranty at no cost to the Department, provided that, for any such failure identified by the Department, the Department notifies the Contractor in writing of such failure during the Warranty Period or within five (5) days of the appearance of a Defect within the Warranty Period, whichever is later, describing the correct operation, provides the Contractor with reasonably adequate documentation and evidence to reproduce such failure, and, when necessary, demonstrates such failure to the Contractor. The Contractor agrees to promptly investigate and verify each reported warranty failure. The Contractor shall make such warranty repairs within a reasonable period of time following such notification by the Department, or as otherwise agreed between the Contractor and the Department, with the reasonableness of the response and correction time being determined based upon the nature and severity of the Defect and the impact of the Defect on the Department's operations and/or ability to fulfill its duties and obligations.
- E. The Contractor shall have no obligation under the Agreement to make warranty repairs attributable to: (i) the Department's misuse or modification of the Product; (ii) the Department's failure to use corrections or enhancements made available by the Contractor at no additional cost to the Department; (iii) the Department's use of the Product in combination with any product other than those specified by the Contractor; (iv) the quality or integrity of data from other automated or manual systems with which the Product interfaces; (v) hardware, systems software, telecommunications equipment or software not a part of the Product which is inadequate to allow proper operation of the Product or which is not operating in accordance with the manufacturer's specifications; or (vi) operation or utilization of the Product in a manner not contemplated by the Agreement. If any such exception applies, the Contractor shall provide notice to the Department, and the Department shall compensate the Contractor for the Contractor's time at the rates set forth in the Agreement and reasonable, out-of-pocket expenses actually incurred in (a) determining the source of and analyzing such condition, and (b) to the extent approved by the Department in advance, rendering consulting services to the Department in remedying such condition.
- F. EXCEPT FOR THE FORGOING WARRANTIES IN THIS ARTICLE V, THE CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED.

- G. The warranties set forth in the Agreement shall not apply with respect to hardware or software that is supplied by a third party to the Department, including products subject to the Salesforce License other than the Product. The terms and conditions of any warranty to the Department with respect to such hardware or software will be provided by the third party vendor of such hardware or software. The Contractor bears no responsibility of any kind for such hardware or software and the Department shall not look to the Contractor for any warranty for such products.
- H. In providing the Services under the Agreement, the Contractor shall be entitled to rely conclusively on any reasonable representation as to the capabilities of a third party's product made by the Department's software and hardware vendors.

ARTICLE VI: INDEMNIFICATION

- A. The Contractor shall indemnify and hold harmless the State, the Department, and their respective officers, directors, employees and agents (each an "Indemnified Person"), from and against any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including reasonable attorneys' fees) directly arising out of any third party claim that the Product or any Deliverable (including use thereof by Contractor or its sublicensees as contemplated by Article IV, Section F) infringes the patent, trademark, copyright, trade secret, or other Intellectual Property rights of a third party, provided that, with respect to the forgoing indemnity and with respect to the indemnity required by Article II, Section B.16.a, and Article II, Section B.16.e, that (i) the Contractor shall have been notified promptly in writing by the Department of any written notice of such claim received by the Department and the Department shall reasonably cooperate with the Contractor in its defense thereof; and (ii) the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise. Notwithstanding the foregoing, Contractor shall not enter into any settlement of a claim without the consent of the Department if such settlement involves a remedy other than the payment of money by the Contractor or, to the extent that any non-monetary relief is provided, such non-monetary relief is applicable only to the Contractor.
- B. If the Department promptly notifies the Contractor of a claim in accordance with Article VI, Section A, above, the Contractor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against the applicable Indemnified Person(s). The Contractor will not indemnify the Department, however, if the claim of infringement is caused by (1) the Department's misuse or modification of the Product, a User Story Deliverable, or any other Deliverable, as applicable; (2) the Department's failure to use corrections or enhancements made available by the Contractor; (3) the Department's use of the Product, a User Story Deliverable or any other Deliverable, as applicable, in combination with any product or information not owned or developed by the Contractor; (4) the Department's distribution, marketing or use for the benefit of third parties of the Product, a User Story Deliverable or any other Deliverable, as applicable, or (5) information, directions, specifications or materials provided by the Department or any third party. If the Product, a User Story Deliverable, or any other Deliverable is, or in the Contractor's opinion is likely to be, held to be infringing, the Contractor shall at its expense and option either (a) procure the right for the Department to continue using it, (b) replace

it with a non-infringing equivalent, and/or (c) modify it to make it non-infringing. The foregoing remedies constitute Department's sole and exclusive remedies and Contractor's entire liability with respect to infringement.

ARTICLE VII: EMPLOYEES

- A. The Contractor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by the Contractor in the performance of the Services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor the Department's request for specific individuals.
- B. Except as the other Party expressly authorizes in writing in advance, neither Party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other Party's Personnel during such Personnel's performance of the Services or during the twelve (12) months thereafter. For purposes of this Section, "Personnel" includes any individual or company a Party employs as a partner, employee or independent contractor and with which a Party comes into direct contact in the course of, and pursuant to, the Services. This provision shall not restrict the right of either party to solicit or recruit generally in the media.
- C. The Department may perform criminal background checks on any employee of the Contractor who will be assigned to the Project and who will perform Services on the Department's premises, other designated locations or have access to the Department's systems. The Contractor shall be solely responsible for the performance of such checks, and for the expense thereof, shall use information from such checks and tests solely for the purposes of approving the Contractor Personnel and shall not disclose the results to any third party, except to the extent required by applicable law or regulation.

ARTICLE VIII: ANTI-DISCRIMINATION

- A. Equal Employment Opportunity Practices. The Contractor agrees to comply with all the applicable terms, provisions, and requirements of Title VII of the Civil Rights Act of 1964, Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations and any other applicable Federal, State, local, or other equal employment opportunity act, law, statute, and regulation, along with all amendments and revisions of these laws, in the performance of this Agreement.
- B. Non-Discrimination Provisions and Requirements. The Contractor agrees to comply with all the applicable terms, requirements, and provisions of Titles VI and VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and any other applicable Federal, State, local, or other anti-discriminatory act, law, statute, and regulation, along with all amendments and revisions of these laws, in the performance of this Agreement, and the Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed or religion, age, sex, color, national or ethnic origin, disability, or upon any other illegal discriminatory basis or criteria in the performance of this Agreement.

ARTICLE IX: TERMINATION

- A. Termination for Cause. This Agreement may be terminated by either Party in the event of a material failure of the other Party to fulfill its obligations under this Agreement through no fault of the terminating Party; but only after the other Party is given:
1. Not less than 30 calendar days' prior written notice of intent to terminate; and
 2. An opportunity for cure and consultation with the terminating Party prior to termination; and
 3. The other Party fails to cure within the notice period prior to termination.
- B. Termination for Convenience. This Agreement may be terminated in whole or in part by the Department for its convenience, but only after the Contractor is given:
1. Not less than 30 calendar days written notice of intent to terminate; and
 2. An opportunity for consultation with the Department prior to termination.
- C. The Contractor may terminate this Agreement or performance of the relevant part of its Services upon written notice, if it determines that a governmental, regulatory or professional entity (including the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board or the Securities and Exchange Commission) or entity having the force of law has introduced a new, or modified an existing, law, rule, regulation, interpretation or decision the result of which would render the Contractor's performance of the services illegal or otherwise unlawful or in conflict with independence or professional rules.
- D. If the Department effects a termination for cause, the Department will pay the Contractor for that portion of the compensation which has become due hereunder as of the date of termination, plus an amount derived from Exhibit F, the Early Termination Fee Schedule, to be calculated as follows: prior to Sprint 0 Acceptance, zero dollars (\$0.00); after Sprint 0 Acceptance, the amount shown on Exhibit F as the "ETF Amount" for the 4-week period immediately preceding the date of termination. No amount shall be allowed for Services that did not result in Successful Completion of User Stories.
- E. If the Department effects a termination for convenience, the Department will pay the Contractor for that portion of the compensation which has become due hereunder as of the date of termination, plus an amount derived from Exhibit F, the Early Termination Fee Schedule, to be calculated as follows: prior to Sprint 0 Acceptance, the amount shown on Exhibit F as the "ETF Amount" for the 4-week period immediately preceding the date of termination; after Sprint 0 Acceptance, the amount shown on Exhibit F as the "ETF Amount" for the 4-week period immediately preceding the date of termination, plus a *pro rata* portion of the amount shown on Exhibit F as the "ETF Amount" for the 4-week period encompassing the date of termination, such *pro rata* portion to be calculated as one-twenty-eighth (1/28) of such amount multiplied by the number of days of such 4-week period that

elapsed prior to the date of termination. Such *pro rata* portion shall be deemed to represent the value of work-in-progress as of the date of termination.

- F. Upon termination, the Department may assume control of the Project and prosecute the same to completion by agreement with another party or otherwise.
- G. If, after termination for failure of Contractor to fulfill contractual obligations, it is determined by a final and binding decision of a court of competent jurisdiction or by agreement of the Parties that the Contractor has not so failed, the Department may terminate the Agreement for convenience upon written notice.
- H. Upon the effective date of termination of this Agreement, all rights of the Contractor to access and use Force.com under the Salesforce License shall cease immediately and the Contractor shall immediately cease, and shall cause its employees, subcontractors and agents to cease, using or accessing, directly or indirectly, rights under the Salesforce License.
- I. In the event the Contractor shall permanently cease conducting business (excluding, for clarity, any sale or transfer of its business or assets or reorganization), subject to Article IV, Contractor shall assign all right, title and interest in and to all work in progress Deliverables hereunder to the Department and the Department shall have the right to make an unsolicited offer of employment to any employees of the Contractor assigned to the performance of the Agreement, notwithstanding the provisions of Article VII, Section B above.
- J. The rights and remedies of the Department and the Contractor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.
- K. Gratuities
 - 1. The Department may, by written notice to the Contractor, terminate this Agreement if it is found after notice and hearing by the Department that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the Department with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
 - 2. In the event this Agreement is terminated as provided in Article IX, Section K.1, above, the Department shall be entitled to pursue the same remedies against the Contractor it could pursue in the event of a breach of this Agreement by the Contractor.
 - 3. The rights and remedies of the Department provided in this Article IX, Section K shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE X: LIMITATION ON DAMAGES

- A. Liability Cap. Except with respect to claims for which the Contractor is obligated to indemnify the Department pursuant to Article VI, Article II, Section B.16.a, and Article II, Section B.16.e, the Department agrees that the Contractor, its subcontractors and their respective personnel shall not be liable to the Department for any claims, liabilities, or expenses relating to this Agreement (“Claims”) for an aggregate amount in excess of Eight Million Dollars (\$8,000,000), except to the extent finally judicially determined to have resulted primarily from the bad faith or intentional misconduct of the Contractor, any of its subcontractors or their respective personnel. Except with respect to claims for which the Contractor is obligated to indemnify the Department pursuant to Article VI, Article II, Section B.16.a, and Article II, Section B.16.e, none of the Contractor, its subcontractors or their respective personnel shall be liable for any loss of use, data, goodwill, revenues or profits, or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense, relating to this Agreement except to the extent finally judicially determined to have resulted primarily from the bad faith or intentional misconduct of the Contractor, any of its subcontractors or their respective personnel. In circumstances where all or any portion of the provisions of this Article is judicially determined to be unavailable, the aggregate liability of the Contractor, its subcontractors and their respective personnel for any Claim shall not exceed an amount which is proportional to the relative fault that its conduct bears to all other conduct giving rise to such Claim.
- B. Notwithstanding anything herein to the contrary, in the event of a valid termination for cause by the Department under Article IX, Section A, above, the license fees that the Department is required to pay to Salesforce.com, Inc. under the Salesforce License, that is attributable to the Department’s use of the force.com platform for the Product (*i.e.*, prorated to reflect the relative usage by the Department of the force.com platform for the Product compared to the total usage of the force.com platform by the State, including usage by the Department for purposes other than the Product) for the usage period between the Anticipated Project Completion Date and the earlier of (i) the end date of the initial term of the Salesforce License, estimated to be January 31, 2020, and (ii) the date on which a substitute product for the Product is first put into production (the “SFDC Delay Fees”) shall not be subject to the preceding exclusion of Consequential Damages under this Article. In no event shall Contractor’s liability for any such SFDC Delay Fees exceed, in aggregate, Two Million Five Hundred Thousand Dollars (\$2,500,000) , and any such liability shall count towards, and be included in, the overall limitation on damages of Eight Million Dollars (\$8,000,000) set forth above in this Article. The Department shall have a duty to mitigate any SFDC Delay Fees.

ARTICLE XI: ADMINISTRATIVE PROCEDURES

- A. Amendment, Modification and Waiver
1. Procedure for Amendment. This Agreement may be amended by written agreement duly executed by authorized officials of both Parties. No alteration, variation, modification or waiver of the terms and provisions of this Agreement shall be valid

unless made in writing and duly signed by both Parties. Every amendment shall specify the date on which its term and provision shall be effective.

2. Nullification. In the event of amendments to current Federal or State laws that nullify any term or provision of this Agreement, the remainder of the Agreement will remain unaffected.
3. Waiver of Default. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver or breach of any other provision and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by an authorized representative of the Department.

- B. Notice Between the Parties. Any notice required or permitted under this Agreement shall be effective upon receipt and may be hand delivered with receipt requested or by registered or certified mail with return receipt requested to the following addressees. Either PARTY may change its address for notices and official formal correspondence upon five (5) days' written notice to the other.

For the Contractor: Deloitte Consulting LLP
Attn: Sanjay Shah, Principal
1400 16th Street, Suite 450
Denver, CO 80202

For the Department: Delaware DSCYF
DMSS Director
1825 Faulkland Road
Wilmington, DE 19805

- C. Subcontracts. The Contractor shall not enter into any subcontract for any portion of the Services other than to subcontract to its affiliates and related entities or to subcontract on a staff augmentation basis, except with the prior written approval of the Department, which shall not unreasonably be withheld. Notwithstanding the foregoing, the Contractor shall not process, and shall not allow any subcontractor of the Contractor or any employee of any such contractor to process, any live production data of the State, including data converted from FACTS I, outside of the United States. The requirements of this paragraph do not extend to the purchase of articles, supplies, equipment, and other day-to-day operational expenses in support of staff providing the services covered by this Agreement. No provision of this paragraph and no such approval by the Department of any subcontract shall be deemed in any event or in any manner to provide for the payment of any amounts in excess of the Full Purchase Price. For the purpose of this Agreement, licensed independent professionals including physicians, psychologists, social workers and counselors shall not be considered "subcontractors" as that term is used in this paragraph.
- D. Non-Assignability. The Contractor shall not assign this Agreement or any portion hereof without prior written approval of the Department and subject to such conditions and provisions as the Department may deem necessary or appropriate. No such approval by

the Department of any assignment shall be deemed to provide for the payment of any amounts in excess of the Full Purchase Price.

E. Interpretation

1. Third Party Beneficiary Exclusion. This Agreement is executed solely for the mutual benefit of the Parties. Except for each Indemnified Person, it is the express intention of the Parties that no provision of this Agreement should be interpreted to convey any rights or benefits to any third party.
2. Choice of Law. This Agreement shall be interpreted and all disputes resolved according to the laws of the State. The Contractor agrees to be bound by the laws of the State and to bring any legal proceedings arising hereunder in a court of the State. For the purpose of Federal jurisdiction, in any action in which the State or the Department is a party, exclusive venue shall be in the United States District Court for the District of Delaware.
3. Interpretation. The article, section and paragraph headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. With respect to any reference made in this Agreement to a Section (or Article, clause or preamble), Exhibit, or Schedule, such reference shall be to the corresponding section (or article, clause or preamble) of, or the corresponding exhibit or schedule to, this Agreement. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require. In this Agreement, with respect to the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.” Unless otherwise expressly provided, the words “including”, “include” and “includes” do not limit the preceding words or terms but shall be interpreted to mean “including without limitation.” Any reference to a specific “day” or to a period of time designated in “days” shall mean a calendar day or period of calendar days unless the day or period is expressly designated as being a Business Day or period of Business Days. The use of “or” is not intended to be exclusive unless expressly indicated otherwise.

F. Qualifications to Conduct Business

1. Qualification to Provide Service. The Contractor warrants that it is qualified to do business in the State and in any other jurisdiction in which any Services shall be provided, and is not prohibited by its constituent or formation documents (*e.g.*, articles or certificate of incorporation, bylaws, certificate of formation or partnership, partnership agreement, etc.) or the law under which it is incorporated or formed from performing the Services.
2. Documentation of Business Status. The Contractor shall submit to the Department copies of all licenses, accreditations, certifications, sanctions, and any other documents that are required by law or regulation with respect to the Services as specified by the Department, including a Delaware Business License. If the

Contractor conducts business in the State, the Contractor must possess a valid Delaware Business License, obtainable from the State of Delaware Division of Revenue. The Contractor shall submit a copy of the license at the time of signature of the Agreement; provided, however, that, if the Contractor is a non-profit organization, the Contractor shall instead submit, at the time of signature of the Agreement, written approval from the U.S. Internal Revenue Service of its non-profit status. If the Contractor uses any subcontractors, the Contractor will ensure that all such subcontractors will either obtain a Delaware Business License or provide proof of an existing Delaware Business License.

3. Change in Business Status. The Contractor shall promptly notify the Department of any change in its ownership, business address, partnership status, and any other occurrence or anticipated occurrence that could materially impair the qualifications or ability of the Contractor to conduct business under this Agreement.
4. Suspension/Exclusion from Medicaid/Medicare. If the Contractor is suspended or excluded from participation in the Medicaid Assistance Program of the State or another state or from the Medicare Program, or charged with sanctions or violation of such programs, the Contractor shall promptly notify the Department in writing of such charges, sanctions, violations, suspension or exclusion. The Contractor agrees such suspension, exclusion, violations, sanctions, or charges may, at the Department's discretion, be deemed good cause for immediate termination of this Agreement upon written notice, and the Department shall not be liable for any Services provided after the date of such termination.

G. Records and Audits.

1. Maintenance. The Contractor shall maintain billing and payment books, records, and documents pertaining to this Agreement to the extent and in such detail as shall adequately document the fees and payment thereof for the Services. The Contractor agrees to maintain such other specific records and statistics regarding the Services as may be reasonably required by the Department and agreed upon in writing in advance. The Contractor agrees to preserve and, upon reasonable advance written request, during normal business hours, make available to the Department such records for a period of three (3) years from the date the relevant Services were rendered by the Contractor. Records involving matters in litigation shall be retained for three (3) years or one (1) year following the termination of such litigation (whichever is later).
2. Availability for Audits. The Contractor agrees to make such records available for inspection, audit, or reproduction to any official State representative upon reasonable advance request. The Contractor agrees that an on-site program review, including review of service records and review of service policy and procedural issuances may be conducted at any reasonable time, with or without notice, by the Department when it is concerned with or about the services performed hereunder. Failure by the Contractor to accord the Department reasonable and timely access to necessary records as provided for herein for organizational audit may be a material

breach of this Agreement and good cause for termination of this Agreement, and the Department shall not be liable for any Services provided after the date of such termination.

3. Costs Owed. The amount of any Agreement overcharge by the Contractor revealed by the examination of the Contractor's financial records hereunder will be reimbursed to the Department by the Contractor (subject to the Contractor's rights to dispute such findings). Reimbursement to the Department for such overcharges shall be drawn from the Contractor's own resources and not charged to Agreement costs or cost pools indirectly charging Agreement costs.
 4. Agreement Termination. The Contractor shall maintain such records for a period of three (3) years from the date the relevant services were rendered by the Contractor and shall make these records available on reasonable advance written request by the Department, during normal business hours, notwithstanding any termination of this Agreement.
- H. Assignment of Causes of Action Relating to Antitrust Laws. In the event the Contractor is successful in an action under the antitrust laws of the United States and/or the State against a vendor, supplier, subcontractor, or other party who produces particular goods or services to the Contractor, that impact on the budget for this Agreement, the Contractor agrees to reimburse the Department the pro rata portion of the damages awarded that are attributable to the goods and/or services used by the Contractor to fulfill the requirements of this Agreement. In the event the Contractor refuses or neglects after reasonable notice by the Department to bring such antitrust action, the Contractor will be deemed to assign such action to the Department.
- I. Use of Name. The Department agrees not to use the Contractor's name in any of its advertising or sales materials. The Contractor reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.
- J. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.
- K. Force Majeure
1. Excused Performance. A Party affected by a Force Majeure (the "Affected Party") shall be excused from its performance of its obligations under or pursuant to this Agreement if, and to the extent that, performance of such obligations is delayed, hindered or prevented by such Force Majeure.

2. Notification. In the event of a Force Majeure, the Affected Party shall notify the other Party in writing promptly of the cause and extent of such non-performance or likely non-performance, the date or likely date of commencement thereof and the means proposed to be adopted to remedy or abate the Force Majeure; and the Parties shall, without prejudice to the other provisions of this Section, consult with a view to taking such steps as may be appropriate to mitigate the effects of such Force Majeure.
3. Obligations of Excused Party. The Affected Party subject to Force Majeure shall act as follows:
 - a. The Affected Party shall coordinate with the other Party, shall keep the other Party regularly informed during the course of the Force Majeure as to when resumption of performance shall or is likely to occur, and shall use commercially reasonable efforts to remedy or abate the Force Majeure.
 - b. The Affected Party shall resume performance within a reasonable time after (1) termination of the Force Majeure or (2) the Force Majeure has abated to an extent that permits resumption of such performance in the Affected Party's reasonable discretion.
 - c. The Affected Party shall notify the other Party when the Force Majeure has terminated or abated to an extent that permits resumption of performance to occur.
- L. No Waiver. The delay or failure by either Party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- M. No Violation of Law. The Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services such that such performance would violate an applicable law or regulation. The Contractor further covenants that, to its engagement principal's knowledge, in the performance of the Services no person having any such interest shall be employed such that their performance of the Services would be in violation of an applicable law or regulation.
- N. No Discrimination. The Contractor acknowledges that the Department has an obligation to ensure that public funds are not used to subsidize private discrimination. The Contractor recognizes that if it refuses to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, the Department may declare the Contractor in breach of the Agreement, terminate the Agreement for cause pursuant to Article IX, Section A, and designate the Contractor as non-responsible.
- O. No Illegal Commissions. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or

understanding for a commission, or a percentage, brokerage or contingent fee in violation of applicable law. For breach or violation of this warranty, the Department shall have the right to annul this contract without liability or at, its discretion, either deduct from any amounts owed to the Contractor hereunder or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

- P. Neither Party is Drafter. This Agreement was drafted with the joint participation of both Parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning of its terms.
- Q. Public Records. The Contractor shall maintain all public records, as defined by 29 *Del. C.* § 502(7), of its Services and the Deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5, to the extent applicable.
- R. Dealings with DCPS. In compliance with State procurement law, the Department may choose to purchase certain hardware and/or software from DCPS. DCPS will perform all activities contemplated by the Agreement that are or may be deemed to be a resale of tangible products for any purpose. Hardware, software and other tangible products will be provided to the Department under the third-party vendor's agreement accompanying such hardware, software or product, and its use will be governed by the terms thereof. In addition, all warranty and support offered by the third party manufacturer or software developer will be as set forth in such agreement, and the Department shall look directly to such third party manufacturer or software developer with respect to such warranty and support obligations. The Department shall permit the Contractor to access and use such hardware and/or software as necessary for purposes of the Contractor's performance of the Services. For purposes of such a transaction, the Contractor may agree to serve as an agent of DCPS solely for purposes of invoicing the Department, if applicable, for the software/hardware/maintenance, and collecting payment with respect to such software/hardware/maintenance.
- S. Survival of Certain Provisions. Notwithstanding anything herein to the contrary, the provisions of Article II, Section C (Confidentiality), Article III (Payment), Article IV (Intellectual Property), Article V (Warranty), Article VI (Indemnification), Article VII (Employees); Article IX (Termination), Article X (Limitation on Damages), and Article XI (Administrative Procedures) shall survive any termination or expiration of this Agreement.
- T. Counterparts. This Agreement may be executed in any number of counterparts (including by facsimile or by portable document format (PDF)), each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.